IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL REVISION APPLICATION No.284 of 2007
WITH
CRIMINAL APPLICATION No. 200 of 2007 (For Bail)

Manoj Shivram Dalvi ..Applicant.

Vs.

The State of Maharashtra ..Respondent.

Mr Maheen Pradhan, Advocate for the Applicant.

Mr Rajesh More, APP for the Respondent-State.

CORAM: V.C. DAGA,J.

DATED: 23RD JULY, 2007.

P.C.:-

1. Heard.

2. Perused revision petition.

3. The applicant has invoked the revisional jurisdiction of this Court to challenge the order dated 25.6.2007 passed in Criminal Appeal No. 599 of 2006 by the Court of Sessions for Greater Bombay confirming the order dated 27.7.2006 passed in C.C. No. 245/PS/2004 dated 27.7.2006; whereby, the applicant-accused is convicted for the offence punishable under Sections 354 and 509 of the I.P.C. sentencing to suffer R.I. for the period of one year and to pay a fine of Rs. 5,000/- in default to suffer further R.I. for six months.

4. The factual matrix reveal that L.T. Marg Police Station, Bombay registered F.I.R. bearing No. 1 of 2001 on 1.1.2001 against the accused u/s. 354 I.P.C. on the basis of the complaint lodged by Smt. Kalpana Joquim D'Costa who lived in room no.11, first floor, Building No.6, Dhobiwadi, Dr. B. J. Marg, Mumbai.

5. The said Smt.Kalpana stated in her complaint that on 19.9.2000 she had gone to L.T.Marg Police Station with her mother and husband to lodge complaint against her neighbour over inadequate water supply in her house. The Writer Shri Dalvi (accused) accepted her complaint and assured her to refer to an officer for redressal of her grievances. Her complaint was registered and was being attended by P.S.I. Shri.Mallesh.

6. On 20.12.2000 P.S.I. Shri Mallesh called the complainant for inquiry with respect to a complaint filed by her when Writer Shri Dalvi (accused-applicant) was present. The Writer, Shri Dalvi (applicant-accused) took down her home address and telephone number stating that he would visit her house on Christmas festival.

7. It is alleged that the Writer Shri Dalvi (accused-applicant) visited the house of the complainant on 31.12.2000 at 7:30 p.m. Her mother and

husband were also present. The accused wished them for Christmas. In turn, the complainant offered him snacks but he avoided to eat. Instead he demanded beer and cigarette. The husband of the complainant, therefore, went out and brought beer and cigarette packet for him. After consuming beer the accused made demand for whisky. Her husband again went out and brought whisky. Seeing that the complainant and her mother were only at home, he looked at the complainant and said "I love you" and said, how they lived in such a small room and he would get a flat at Chembur at Sindhi Colony and that he would solve all these problems. He said to her mother that he loved one girl. Her mother asked, who was that girl?. The accused did not answer but he kissed her daughter's hand who angrily pulled it back. Then he asked her mother "will he got love of her daughter?". He bowed to her mother and gave his Landline and Mobile number.

8. After about 15 minutes, her husband returned with whisky. The accused started drinking whisky. They told him, they were getting late for a mass to attend in a church at Colaba. So he was requested to go early but he did not pay any heed. At last, while leaving house at 10:10 p.m. he was looking at the complainant and offering flying kiss, saying he would acquire her love in a year at any cost. The complainant also told her husband what had happened in

his absence while he was out for bringing whisky.

9. After recording the evidence, the complainant P.W.no.1 was examined;wherein, she has categorically stated as under:-

> "While her husband was went out to bring whisky for the appellant and when complainant and her mother i.e. only two ladies were at home, the appellant looking towards the complainant said, "I love you". He then asked complainant's mother, as to how they were staying in such a small room and he would secure a flat for them in Sindhi Colony, Chembur and told complainant's mother that he would solve all their difficulties. The appellant then told complainant's mother that he was in love with one girl, thereupon complainant's mother asked him about the name and address of that girl, but the appellant-accused refused to disclose the name and address of that girl. The appellant then tried to kiss the right hand of the complainant and thereupon she got annoyed and prevented by doing so by taking her hand back from him. The appellant then bowed down before the complainant's mother and prayed for love of her daughter."

10. P.W.3 Smt. Rechel - complainant's mother also corroborated the aforesaid version of P.W.1 complainant, since she was also present at the time of the occurrence of aforesaid incident.

11. The said evidence was appreciated by the lower appellate Court and held as under:-

> "Accordingly, it is apparently clear that when the appellant tried to kiss the hand of the complainant and when she pulled her hand back, preventing the appellant therefrom, the appellant certainly applied the criminal force intending to outrage the complainant's modesty or knowing that the said act of the appellant is likely to outrage complainant's modesty and, therefore, there is no substance in the argument canvassed by Mr. Pradhan, Advocate for appellant, that holding hand of the complainant will not amount to applying the criminal force."

12. From the facts of the case, it is apparently clear that the applicant-accused was the guest at the residence of the complainant and the complainant and her family members entertained him by offering beer and cigarettes, though complainant's husband was not drinking beer and thereafter also on the insistence of the appellant, whisky of specific brand of "Mac Dowel"

was offered to him and while the complainant's husband was out of the house for fetching the whisky, the appellant behaved in the aforesaid manner when only two ladies i.e. complainant and her mother were present in the house and expressed feelings towards the complainant saying that "I love you", as well as bowed down before complainant's mother, begging for the love of the complainant, which was totally out of place and unwarranted, which amounted to assault i.e. making gesture intending or knowing it to be likely that such gesture will cause the complainant to apprehend about the appellant and such gesture coupled with holding hand was apparently intended to outrage modesty of the complainant or knowing it to be likely that the said gesture would outrage the modesty of the complainant and hence, there is no substance in the argument canvassed by learned Advocate Mr Pradhan, that expressing feelings of "I love you" before the complainant by the applicant-accused did not amount to outraging the modesty of a woman.

13. The Courts below have appreciated the evidence of P.W.2 Jokim D'Costa (husband of the complainant) who has corroborated with P.W.1,Mrs Kalpana. P.W.3 Smt.Rechal has also corroborated P.W.1 since she was a eye witness to the incident. Their evidence has also been properly appreciated by the Courts below. No fault can be found in the appreciation of evidence.

14. The learned Advocate Mr Pradhan for the applicant, switching over to another limb of his submission, argued that no specific reasons have been given by the learned Magistrate while rejecting the prayer made under the Probation of Offenders Act and benefit under Section 360 of the Cr.P.C. of releasing the applicant-appellant on probation of good conduct or admonition was not given to the applicant-accused though it was his first offence. He relied upon the ratio laid down in the ruling reported at **1984, MLJ,472, Constancio Figueiro Guirin Vs. State**.

15. He urged that the appellant ought to have been given benefit of Section 360 of the Cr.P.C. and the provisions of Probation of Offenders Act and he ought to have been released on probation of good conduct or after admonition. It is also submitted that if the appellant-accused is punished, it would not be punishment for him, but it would be punishment for his family. Similar prayer is repeated before this Court by Mr Pradhan for the same reasons.

16. The aforesaid submission is dealt with by the Court below and rightly in the following words:-

"However,it is seen from the judgment that after hearing both the learned respective Advocates on

the point of sentence, the learned Magistrate has categorically stated that the appellant who is a constable who was on duty has committed the offence of the nature under Sections 354 and 509 of IPC of using criminal force and outraging the modesty of a woman, he was not inclined to take lenient view and to release the accused on probation of good conduct. He also observed that the punishment should act as a lesson to newly born culprits in police department and others who are on the threshold of committing the offence and came to the conclusion that therefore, no leniency be shown to the accused."

17. I fully concur with the above finding. The evidence led by the prosecution justify the findings recorded by both the Courts below.

18. This Court not being a Court of appeal cannot substitute its own view in exercise of revisional jurisdiction. Revisional jurisdiction is not only limited in scope but also it is discretionary. The Court interferes in the revisional jurisdiction only in exceptional cases of flagrant miscarriage of justice as held by the Apex Court in the case of **State of Rajasthan v. Gurucharandas Chaddha, AIR 1979 SC 1895.**

19. In the above view of the matter, no case is made out to interfere with the impugned order. In the result, the revision application has no merit. Same is accordingly dismissed with no order as to costs.

20. Criminal Application No. 200 of 2007 also stands disposed of.

(V.C. DAGA,J.)